



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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December 6, 2001

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The Honorable Norman Y. Mineta
Secretary of Transportation
400 Seventh Street, SW
Washington, DC 20590

Dear Mr. Secretary:

During the 25 years in which you have played a major role in aviation policy, you have always worked to preserve the competition needed to continue the lower fares and other benefits of deregulation. Given your strong beliefs on this issue, I am confident that you will appreciate the threat to competition posed by the request of American Airlines and British Airways for antitrust immunity to allow these two companies to operate as one in establishing schedules and fares.

Two years ago, the proposed merger of United and US Airways seriously threatened competition. The merger itself would have substantially reduced competition, and if approved it would have triggered defensive mergers by United's competitors, which could have reduced the industry to three major carriers. Defensive mergers were likely because in today's industry, it is generally believed that if one of the largest network carriers, such as United, grows even larger through a merger, it will gain substantial marketing advantages and its competitors will not be able to survive unless they increase their size through defensive mergers. I believe that this would have been the effect of a United-US Airways merger, and I strongly and repeatedly urged the Department of Justice to stop that merger.

Now the dangers to competition are even greater. All of the industry has been seriously weakened by the loss of revenue following September 11. Any merger or antitrust exemption that strengthens one of the largest carriers will further damage its competitors, and the weaker carriers will be likely to disappear through failure or merger.

The proposed de facto merger of AA and BA has the same potential for weakening competition as United-US Airways. An AA/BA consolidation will entrench American in major markets, weakening American's competitors and pushing them towards defensive mergers.

I must emphasize that the AA/BA proposal does not merely contemplate an alliance with code sharing. Rather, the two carriers are seeking antitrust immunity that would allow them to make joint decisions on pricing and service. This is the equivalent of a merger. The law is clear that this type of proposal must be analyzed as though it were a merger, and should be approved only if it would be appropriate to approve a merger.

I see no basis for approving a merger that would reduce competition as dramatically as AA/BA. Heathrow is now the largest U.S. transatlantic destination with 11 million annual passengers, compared to 6 million for the next largest, Frankfurt. Heathrow is the choice of London airport for high-yield business passengers over Gatwick, by almost 7-1.

AA and BA are now competitors in six of the largest U.S.-Heathrow markets: Boston, Chicago, Dallas, Los Angeles, Miami, and New York. If the two carriers merge their operations, they will control more than 60% of most of these markets, substantially reducing competition in markets with almost \$4 billion in annual revenue. This is four times the revenue involved in overlapping markets of United and US Airways. This is reason enough to deny antitrust immunity.

There is no realistic possibility that other U.S. carriers, not now serving Heathrow, could successfully replace the lost competition. The pleadings filed on the AA/BA application convincingly demonstrate that even if we have "open skies" for Heathrow on paper, new U.S. carriers will not be able to obtain the slots needed to compete.

The reduced competition that would result from the defacto merger of AA/BA is reason enough to deny it. We should also be extremely concerned about the "downstream" effects of the proposal on the U.S. industry. Approval of this alliance, and the similar proposal of United and British Midland, will eliminate the actual and prospective competition that United and American now face in many Heathrow markets. This will strengthen American and United financially, and allow them to develop additional Heathrow service, which, in turn, will make it even more difficult for other U.S. carriers to compete at Heathrow, even if they gain theoretical rights to do so.

In addition, the increased domination of Heathrow by United and American will give them substantial marketing advantages over their U.S. competitors. Corporate customers and frequent fliers prefer to deal with an airline that gives them access to important destinations, such as Heathrow. To the extent the proposed alliance will strengthen and entrench American's and United's domination at Heathrow, their competitors will be disadvantaged and will feel the need to increase their size and strength through defensive mergers.

On a procedural issue, I am disturbed by press reports that the Antitrust Division of the Department of Justice will not be participating in the AA/BA proceeding. The governing law, 49 U.S.C., §4309, contemplates involvement of the Department of Justice in antitrust exemption cases; and, in a proceeding as important as this one, DOJ's participation should be public. Our Nation's gratitude for the United Kingdom's assistance in the war against terrorism should not cause us to abandon our well-established antitrust policies that are designed to provide the best airline service for consumers, in both the U.S. and U.K.

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In sum, I believe that the AA/AB proposal is as threatening to competition as the proposed merger of United and US Airways. In evaluating this proposal, our primary concern must be to ensure that the airline industry that emerges from the financial crisis caused by the events of September 11 is a competitive industry that can provide good service and low fares for consumers. I am confident that you share these objectives and that they will guide your decision.

Sincerely,



James L. Oberstar
Ranking Democratic Member